



## Department of Energy

BPA Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

CORPORATE

January 20, 2006

In reply refer to: DKT-7

Kevin Kolevar  
Office of Indian Energy and Economic Development  
MS2749 ATTN: Section 1813 Study  
1849 C Street N.W.  
Washington DC 20240

RE: Congressionally Mandated Study of Energy Rights-of-Ways on Tribal Lands

Dear Mr. Kolevar:

This letter serves Bonneville Power Administration's comments in response to the December 29, 2005, Federal Register notice requesting comments about how to proceed with the implementation of section 1813 of the Energy Policy Act of 2005.

BPA was formed in 1937 by Congress to market and transmit power from the federal dams on the Columbia River. BPA is part of the U. S. Department of Energy (DOE). Unlike most federal agencies, BPA is self-supporting and pays its bills not through taxes, but by setting rates and charging for sale of power and transmission services. BPA owns and operates three-fourths of the Northwest's high voltage transmission lines. BPA owns 15,012 circuit miles of high-voltage line that crosses 300,000 square miles in Oregon, Washington, Idaho, Montana and sections of Wyoming, Nevada, Utah and California.

Currently, BPA has 899 tracts across tribal lands impacting 16 tribes in the northwest. Of the total tracts, 224 have term easements with varying expiration dates. BPA has always negotiated for tribal land rights based on an appraisal consistent with federal guidelines and within the parameters of the BPA's Tribal Policy. BPA prefers a fair market value approach for valuing land rights. In acquiring lands BPA is with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) and its amendments and regulations mandate a number of requirements in regard to acquisition of land rights. These regulations are found under 49 CFR Part 24. §24.101. The outcome of Section 1813 may require amendments to the regulations.

### Supplementary Comments:

1. **An analysis of historical rates of compensation** – BPA is offering to participate in the study team regarding historical rates and compensation. In the recent past, BPA has had the opportunity to work with many tribes and landowners to provide some services in-lieu of or in addition to financial compensation. This option has allowed BPA to successfully complete negotiations, maintain critical relationships and continue business operations.
2. **Recommendations for appropriate standards to determine fair and appropriate standards for compensation** – BPA is offering to be a member of the team evaluating the formula that will define the standard. We would also like to request that, if this standard is established, it be very clear about the function of the right of way. The Federal Register Notice (FRN) talks specifically

about gas pipelines. BPA would like it to include transmission lines and requests an additional committee, which would include participation from transmission line owners, be formed to ensure that our issues are specifically addressed. BPA supports the use of the fair market value as the preferred approach, but would want criteria developed that allowed for the flexibility to negotiate for consideration other than cash, equivalent to the value of the right-of-way identified as a result of this study. Although our preference is to have perpetual easements, we understand that many tribal governments are unwilling or unable to commit beyond 20-years, so consideration relative to the term of the easement will need to be addressed.


3. **An assessment of tribal self-determination and sovereignty interests implicated by applications of rights-of-way on tribal land** – BPA would like to participate on this study team. We have been working with the tribes in our region to maintain our relationship and to fulfill our trust responsibility under BPA's Tribal policy. We request that the study team clearly define "tribal land." Currently, BPA is assuming that this definition does not include ceded tribal lands but the FRN is not clear on this point.
4. **An analysis of relevant national energy transportation policies** – Again, BPA is willing to participate in the study team. With the 899 tracts across tribal lands we would like to provide as much information and support needed to help make the process as successful as possible.

#### **Work Plan Comments:**

1. **Department of Interior (DOI) and DOE pre-scoping phone calls and meetings** – BPA would like to volunteer to be a member of the process group to help coordinate and facilitate the meetings as well as be a participant in the process.
2. **DOI and DOE propose to contract with a DOE National Laboratory to prepare an analysis of historical rates of compensation for pipelines crossing Indian land** – BPA would like to work with DOE and DOI as a cooperating agency to help establish any contracts for studies associated with the four focus areas. BPA would like clarity about the analysis criteria to ensure that it covers all right-of-way issues and not exclusively "pipelines."
3. **DOI and DOE 2-day nationwide scoping meeting and presentations** – BPA would like to help coordinate these meetings as well as be a presenter. Please add us to any distribution list would like to be a member of the scoping committee to help with the implementation of the work plan.

BPA supports the DOI and DOE approach for planning to implementation of the remainder of the process. We are willing to participate in all four of the study areas and help with any outreach that may be necessary for successful implementation of the work plan. If you have any questions or need additional information please contact me at 503-230-7631 or Marion Wolcott, BPA Realty Supervisor at 503-230-5520.

Sincerely,



Sonya M. Tetnowski  
Tribal Affairs Manager  
Bonneville Power Administration